NO. 22382

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR RONALD DECATUR,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

WM. MATTHEW BYRNE, JR.,
United States Attorney,
ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,
GEORGE G. RAYBORN,
Assistant U. S. Attorney,

1200 U. S. Court House
312 North Spring Street
Los Angeles, California 90012
688-2416 or 688-2434

Attorneys for Appellee,
United States of America.

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I

STATEMENT OF ISSUE

Defendant's brief raises only one issue:

Did the trial court err in finding that the arrest of defendant was lawful?

II

STATEMENT OF THE CASE

A. STATEMENT OF PROCEEDINGS

On April 26, 1967, a three count indictment was filed against defendant Arthur Ronald Decatur by the Grand Jury for the

Central District of California [C. T. 2]. [1] The indictment charged a violation of Title 18, United States Code, §1708, Possession of Stolen Mail and Theft of Mail.

On May 1, 1967, defendant was arraigned and entered a plea of not guilty. On May 23, 1967, trial by jury, commenced before the Honorable Manuel L. Real, United States District Judge, Central District of California [R. T. 4]. [2] Defendant was found guilty on May 25, 1967 [R. T. 238] and, on June 19, 1967, was sentenced to imprisonment for a period of five years [3] on each of Counts One, Two, and Three, to be served concurrently, under the terms of Title 18, United States Code, §4208(a)(2) [C. T. 6].

Jurisdiction of the District Court was based on §§1708 and 3231, Title 18, United States Code. Jurisdiction of this Court to entertain the appeal is deprived from §§1291 and 1294, Title 28, United States Code.

B. STATEMENT OF FACTS

On April 11, 1967, mail carriers Angelo L. Gamero and Henry H. Alpert discovered that a quantity of mail was missing from their respective route relay (storage) boxes [R. T. 35 and 48].

1/ "C. T." refers to Clerk's Transcript of Record.

2/ "R. T." refers to Reporter's Transcript of Proceedings.

3/ The trial court directed that the first three years of defendant's sentence in the instant case be served consecutively to the sentence defendant was serving in criminal case No. 35824 [C. T. 6].

At approximately 7:53 p. m., that night, defendant was arrested by Postal Inspectors J. C. Peterson and K. B. Daws [R. T. 67, 68 and 76]. Inspector Peterson searched defendant and found a key in his right hand pocket [R. T. 77]. This key was used to open the trunk of a 1959 Rambler automobile where various evidentiary items were discovered and seized [R. T. 76 and 94].

At defendant's trial, the Government offered as evidence the items seized from the trunk of the 1959 Rambler on April 11, 1967 [R. T. 94]. Defendant contended that the items were the result of an unlawfully search and seizure and orally moved to suppress the items [R. T. 69 and 95]. Judge Real, after having heard the evidence on defendant's motion outside the presence of the jury, found that there was reasonable cause for the arrest and that the search was incident to a lawful arrest [R. T. 96]. Government's Exhibits No. Two, Four, Five and Six were thereafter admitted into evidence [R. T. 140].

III

ARGUMENT

DEFENDANT WAS LAWFULLY ARRESTED

1. Under the Circumstances of the Instant Case, It Is Not Necessary For This Court to Determine Whether Title 39, United States Code, §3523(a)(2)(k), In Itself Authorizes Postal Inspectors to Make An Arrest

Section 3523(a)(2)(k), Title 39, United States Code, defines the duties and responsibilities of Postal Inspectors to include the following:

> "In any criminal investigation, develops evidence, locates . . . suspects; apprehends and affects arrests of postal offenders. . . ."

The Fifth Circuit Court of Appeals recently held that this section does not, in itself, authorize postal inspectors to make an arrest on their own. Alexander v. United States, 390 F. 2d 101 (5 Cir. 1968). Defendant now urges this Court to follow the Alexander decision.

The Government has previously urged this Court to hold that §3523(a)(2)(k) does authorize postal inspectors to make arrests. See Ward v. United States, 316 F. 2d 113 (9 Cir. 1963); and Neggo v. United States, 390 F. 2d 609 (9 Cir. 1968). However, because of the circumstances of the cases, this Court has heretofore found it unnecessary to decide this issue. In view of this

Court's previous decisions and that Congress has now added a new section (18 U. S. C. §3061) to the Criminal Code specifically granting postal inspectors the authority to make warrantless arrests, the Government does not now urge that this Court hold that §3523 authorize such arrests. However, the legislative history of §3061 makes it clear that the purpose of the new section was to clarify the authority of postal inspectors rather than to grant new authority. See House of Representatives Report No. 1725, 90th Congress, 2d Session, July 17, 1968.

2. The Postal Inspectors Had Sufficient Reasonable Cause to Believe That Defendant Had Committed a Felony to Effect a Lawful Arrest Under State Law

Assuming that the arrest of defendant was not authorized by §3523(a)(2)(k), the validity of the arrest must be determined by looking at the law of the state where the arrest occurred. See United States v. Di Re, 332 U. S. 581 (1948). In California, the authority for a private person to arrest another, without a warrant, is found in §837 of the California Penal Code. That section provides, in part, as follows:

"A private person may arrest another.

* * * *

"3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it."

In the Ward case, supra, this Court noted that an arrest under §837(3) must satisfy two requirements: "a felony must have been committed by someone; and (b) 'reasonable cause must exist' to believe the person arrested committed the felony." 316 F. 2d at 117. In the instant case, the theft of the mail from the carrier's relay boxes constituted a felony. See §§1708 and 1, Title 18, United States Code. Therefore, the only issue is whether the postal inspectors had reasonable cause to believe that defendant had committed the felony.

In Ward, this Court made the following comment concerning what constitutes reasonable cause:

> " 'Reasonable cause for arrest' is no esoteric formula. Would the information and knowledge the arresting person had lead a person of ordinary reasonable judgment, intelligence, care and prudence, to believe the person to be arrested had committed the felony? [Citation of cases omitted.]
>
> "The belief may amount only to an honest and strong suspicion that the person arrested is guilty of a felony." [Citation of cases omitted.] 316 F. 2d at 117.

When that standard is applied to the circumstances of this case, it shows that the arrest of defendant was predicated upon reasonable cause.

Inspectors Peterson, Daws, and Collier staked-out an area behind an apartment complex at 4555 Santa Barbara Avenue at approximately 5:40 p. m. on the night of defendant's arrest [R. T. 123 and 124]. Mail from two relay (storage) boxes had been discovered missing that day and on previous occasions mail taken from relay boxes had later been discovered dumped in garbage bins behind this apartment complex [R. T. 92]. The Inspectors did not have any information as to who was taking the mail but Inspector Peterson had received information that a "dirty white or light blue Nash Rambler" had been observed in the vicinity where some of the previous losses had occurred [R. T. 75].

After the stake-out was established, the following events took place:

1. At approximately 7:40 p. m., Peterson checked the trash bins [R. T. 67 and 120];

2. Approximately fifteen minutes later, he received a radio message from Collier that "the man just drove up to the far bin, opened up the trunk of the car and is dumping something into the garbage bin like mad. He is making several trips." [R. T. 87];

3. Collier told Peterson that the man was in a white Nash automobile [R. T. 75];

4. Peterson then ran back to the area of the garbage bins and again looked into the bins [R. T. 89]. (The trash bins had been under Collier's surveillance between 7:40 p. m. and this time and Peterson knew that no one else had gone to the bin

since he had checked it [R. T. 91 and 128-129]);

5. In one of the bins which Peterson had previously checked and had determined that it was empty at that time, he saw a large quantity of torn mail [R. T. 67 and 68];

6. Peterson saw defendant attempting to enter the driver's side of a Nash Rambler automobile [R. T. 67];

7. Peterson recognized defendant as a man whom he knew had previously been convicted of the crime of possession of stolen mail [R. T. 72, 73 and 76];

8. Peterson then told Daws to place defendant under arrest [R. T. 76].

Based upon the information he had received and his own observations, Inspector Peterson had reasonable cause to believe that defendant was guilty of a felony. Consequently, the requirements of §837(3) were satisfied and the arrest of defendant was a lawful citizen's arrest.

3. The Search of the Car Trunk By Inspector Peterson Was Incident to the Lawful Arrest of Defendant and Was Within the Scope of That Arrest

Defendant does not specifically contend that the search of the car trunk was beyond the scope of Peterson's authority to search even if incident to the arrest. Nevertheless, the Government believes that a brief response on this point is appropriate.

The record shows that, immediately preceding the arrest of defendant, Peterson observed defendant attempting to enter the driver's side of the Nash automobile [R. T. 67]. Defendant was placed under arrest and Peterson removed the key from him and opened the trunk of the Nash and extracted the items that were used as Government's Exhibits Two, Four, Five and Six [R. T. 91 and 92].

At least since the pronouncement of the Supreme Court in Carroll v. United States, 267 U. S. 132 (1925), the proposition that an automobile may be searched without a warrant if incident to an arrest has been settled. Furthermore, both California and Federal courts have held that an automobile not occupied by the arrestee at the time of the arrest may be searched incident thereto even if some considerable distance intervenes between the arrest site and the location of the vehicle. Rhodes v. United States, 224 F. 2d 348 (5th Cir. 1955) (100 yards); United States v. Fortier, 207 F. Supp. 516 (D. C. Conn. 1962) (250 feet); People v. Williams, 67 Cal. 2d 226, 60 Cal. Rptr. 472, 430 P. 2d 30 (1967) (one block); People v. Dailey, 157 Cal. App. 2d 649, 321 P. 2d 469 (1958) (50-60 feet).

Even if the search could not be found incident to the arrest of defendant, it was still a valid search under the doctrine of "exigent circumstances". This doctrine, briefly stated, is that under some circumstances peace officers are justified in making a search without a warrant in order to preserve evidence, apprehend suspects, etc. This doctrine may be applied to situations

occurring before or after arrests.

General speaking, the Supreme Court first gave voice to this doctrine, in relation to automobile searches, in Carroll v. United States, supra, at page 151 when it stated:

> "[There is a] difference as to necessity between goods subject to forfeiture, when concealed in a dwelling house or similar place, and like goods . . . concealed in a movable vessel where they readily could be put out of reach of a search warrant."

The Court has also stated in Preston v. United States, 376 U.S. 364, 366 (1964) that:

> "Questions involving searches of motorcars or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses.
>
> "What may be an unreasonable search of a house may be reasonable in the case of a motorcar."

In regard to searches under exigent circumstances which occur after an arrest, this Court has generally stated in Boyden v. United States, 363 F.2d 551, 553 (9th Cir. 1966):

> "[It is the] right and duty on part of an arresting officer to seize the fruits of the crime and the instruments of the crime as evidence, at

the time of arrest, if his leaving them unseized would create a danger that they would be destroyed."

Further, this Court has stated in Travis v. United States, 362 F.2d 477, 480-81, fn. 3 (9th Cir. 1966):

> "Where it is not practicable to secure a warrant to search a vehicle for contraband goods because the vehicle can be quickly removed out of the locality or jurisdiction, the vehicle may be searched by a proper official then having probable cause to believe that the vehicle contains such goods."

It is only necessary to briefly reiterate some of the facts relevant to the search to show that the search was within the scope of Peterson's authority incident to the arrest. Peterson knew that quantities of mail from two relay boxes were missing; he had been informed that the defendant was dumping mail into the garbage bins; and, when he saw defendant, defendant was trying to get into the driver's side of the car. The search of the car trunk occurred immediately after defendant was arrested. Based on this record, there can not be any doubt but that the search was almost contemporaneous with defendant's arrest. Moreover, the area searched, the trunk of the car, was only a few feet removed from the area where defendant was arrested, the door of the car.

Additionally, Peterson was justified in searching the car trunk under the exigent circumstances present. He knew that

defendant had dumped some mail in the garbage bin. He did not know if there was any more mail in the car trunk. If there were stolen mail in the trunk and he left it unattended, the possibility existed that someone would have moved the car or taken the mail prior to his return. Under these circumstances, he had a perfect right to search the trunk for the fruits of defendant's crime.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the trial court should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.,
United States Attorney,

ROBERT L. BROSIO,
Assistant U. S. Attorney,
Chief, Criminal Division,

GEORGE G. RAYBORN,
Assistant U. S. Attorney,

Attorneys for Appellee,
United States of America